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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,610	04/27/2007	Eduardo Aldecon Anitua	ANTUA 6	8345
1444 7590 07/09/2010 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303				
EXAMINER LAWSON, MATTHEW JAMES				
ART UNIT 3775		PAPER NUMBER		
MAIL DATE 07/09/2010		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/588,610

Applicant(s)

ANITUA, EDUARDO ALDECOA

Examiner

MATTHEW LAWSON

Art Unit

3775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2010.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-16 is/are pending in the application.
4a) Of the above claim(s) 13-16 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 9-12 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SI/220)
4) ☐ Interview Summary (PTO-413)
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jorneus et al. (US 5,741,267) in view of Meller (US 2004/0210229).

Jorneus et al. disclose a milling procedure to be carried out on the bone, cartilage or other patient tissue in order to form a cavity (figures 2-5) of a shape and size that allows it to house an implant or prosthesis (figures 1 and 6) or for other purposes in which a cavity needs to be formed, with the procedure being based on the repeated application of various rotating milling tools (figures 2-6) on the tissue until the required cavity is formed, with the procedure comprising an intermediate phase in which the depth, width and other main features of the cavity are defined (figures 3-4) and an optional countersinking phase (figure 5) in which the mouth of the cavity is widened

Jorneus et al. do not disclose the intermediate, countersinking, or initial phase of tool use being operated at low speeds ranging from between 20 and 80 rpm, nor does Jorneus et al. disclose no use of irrigation solution being applied on the tools, loose tissue particles, or the tissue surrounding the mill hole or cavity during the low speed milling process.

With regard to claim 9, it would have been obvious to one having ordinary skill in

the art at the time the invention was made to construct the method of Jomeus to mill within a range of 20 and 80 rpm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Further, Jomeus et al. fail to disclose the tissue particles displaced or extracted as a result of the milling process are collected for subsequent use in other surgical processes, the recovery of the tissue is not being dependent on the use of suction machines and being based on that the tissue displaced or extracted during the milling process is housed in the milling tool as a result of the retentive design of the tool, so that when the tool is taken out these particles are extracted from it and can be used or stored as appropriate for other surgical uses, and the tissue particles collected during the milling process are mixed with Plasma Rich in Growth Factors or with other biological materials for desirable medical purposes.

Meller discloses the collection of displaced or extracted tissue particles as a result of the milling process and are collected for subsequent use in other surgical processes (figures 1-6, ¶¶3-6, and 72) and being housed in the milling tool as a result of the retentive design of the tool (figures 1-6), so that when the tool is taken out these particles are extracted from it and can be used or stored as appropriate for other surgical uses, and the tissue particles collected during the milling process are mixed with Plasma Rich in Growth Factors or with other biological materials for desirable medical purposes (figures 1-6, ¶¶3-6, and 72).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the method of Jorneus et al. to including collection of collecting the tissue particles displaced or extracted as a result of the milling process for subsequent use in other surgical processes, the recovery not being dependent on the use of suction machines and so that when the tool is taken out these particles are extracted from it and can be used or stored as appropriate for other surgical uses as taught by Meller to better fixate the implant within the milled out surgical site.

Response to Arguments

Applicant's arguments, see pages 6-7, filed April 21st, 2010, with respect to Yeung Wai Ping (US 2006/0111724) have been fully considered and are persuasive.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lorenzi (US 2002/0094508) teaches a related low speed milling device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW LAWSON whose telephone number is (571)270-7375. The examiner can normally be reached on M-F, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. L./
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art
Unit 3775